IN THE
SUPREME COURT OF MISSOURI

No. SC85086

STATE OF MISSOURI,

Respondent,

v.

MICHAEL C. LANGDON,

Appellant.

APPEAL FROM THE CIRCUIT COURT OF ST. CHARLES COUNTY
ELEVENTH JUDICIAL CIRCUIT
THE HONORABLE NANCY L. SCHNEIDER, JUDGE

RESPONDENT'S SUBSTITUTE BRIEF

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ATTORNEYS FOR RESPONDENT
STATE OF MISSOURI

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JURISDICTIONAL STATEMENT

Appellant appeals from a judgment of the St. Charles County Circuit Court convicting him of one count of the Class C felony of receiving stolen property (§ 570.080, RSMo 2000). Appellant was sentenced to nine months in the county jail and fined $1000. Following a Missouri Court of Appeals, Eastern District opinion affirming Appellant's conviction, this Court ordered this appeal transferred to it. Therefore, jurisdiction lies in this Court. MO. CONST. art. V, § 10; Rule 83.04.

STATEMENT OF FACTS

Appellant appeals his conviction in St. Charles County Circuit Court of one count of the Class C felony of receiving stolen property. The State charged Appellant with one count of receiving stolen property based on Appellant's retaining a Smith & Wesson 9 mm handgun that he knew or had reason to believe had been stolen (L.F. 60-61). Appellant was tried by a jury on July 24-25, 2001, with the Honorable Nancy L. Schneider presiding (L.F. 4-5). Appellant contests the sufficiency of the evidence to support his conviction. Viewed in the light most favorable to the verdict, the evidence at trial showed that:

In December 1999, Kevin Dunnerman (the victim) withdrew approximately $4000 from the bank because he was concerned about the "Y2K" computer problem (Tr. 71-72). He took the money to his home, locked it in a briefcase, and put the briefcase in his bedroom near the closet door (Tr. 71-73). He also put three pistols, including a Smith & Wesson 9 mm and a Cobra 3A10 9 mm (Mack 10), into the briefcase with the money (Tr. 71-72). The victim had applied for a permit to acquire the Smith & Wesson, which was worth $350, but had not obtained one for the Mack 10, which had been given to him by his brother who had found it in the woods (Tr. 78).

The victim discussed the "Y2K" problem with his friend and coworker, Peyton Coleman, and he told Mr. Coleman that he had withdrawn money from the bank and was keeping it at his residence (Tr. 74-75). Mr. Coleman, who had been to the victim's

residence, repeated what the victim had told him to his best friend Nathan Speaks, Appellant's nineteen-year-old stepson (Tr. 74-75, 137-38, 143-44).

On Christmas Eve, three days or so after he had withdrawn the money, the victim discovered that his briefcase was missing (Tr. 73). The victim also found a tire iron that did not belong to him on his closet floor and after further investigation noticed that the chain on his back door was broken and that the tire iron had been used to pry the door open (Tr. 73-74).

Meanwhile, Mr. Coleman received $2000 in cash from Appellant's stepson approximately a week after telling him about the money in the victim's house (Tr. 145). Mr. Coleman later pleaded guilty to receiving stolen property (Tr. 145-46, 152, 155). In addition to the jail sentence he received for this conviction, Mr. Coleman was ordered to pay $2000 in restitution to the victim (Tr. 146).

On March 31, 2000, officers from the St. Charles County Sheriff's Department executed a search warrant at Appellant's Lake St. Louis residence (Tr. 93-94). The only people who resided there were Appellant, his wife Pam, their teenaged daughter Carly Langdon, and Appellant's stepson, Nathan Speaks (Tr. 104, 107-08, 148-49). The house had one bedroom on the main level, which belonged to Appellant's stepson, and two bedrooms upstairs (Tr. 95-96, 148, 150). One upstairs bedroom, containing a bed for only one person and decorated for a teenaged girl, belonged to Carly Langdon (Tr. 104, 108, 148-49). The other upstairs bedroom was the master bedroom (Tr. 96).

The master bedroom had two closets; one contained women's clothing and the other men's clothing (Tr. 97). In the closet containing men's clothing, the police found numerous "long guns" and a plastic storage case containing four handguns and ammunition (Tr. 98; State's Ex. 5).[1] In the bedroom itself, the police searched a large black dresser that also contained only men's clothing (Tr. 99; State's Ex. 3).[2] In one of the drawers, the police found the victim's Smith & Wesson 9 mm gun and some ammunition concealed under some men's shirts (Tr. 76-77, 100-01; State's Ex. 4).[3] The police also searched Appellant's garage and found the victim's Mack 10 in a duffel bag (Tr. 76-77, 79, 104-05). Records showed that Appellant did not own a registered handgun in St. Charles County and had never applied to the St. Charles County Sheriff for a permit to acquire a "concealable firearm" (Tr. 126, 132-33).

Appellant offered no evidence at trial (Tr. 159-60). The jury found Appellant guilty, and the trial court sentenced Appellant to nine months in the county jail and to pay a $1000 fine (L.F. 9-11, 26).

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[1]State's Exhibit 5 is a photograph of the closet containing the guns (Tr. 97-98).

[2]State's Exhibit 3 is a photograph of the black dresser (Tr. 97).

[3]State's Exhibit 4 is a photograph of the dresser drawer after the victim's stolen gun had been seized and removed (Tr. 101-02).

ARGUMENT

I.

The trial court properly overruled Appellant's motion for judgment of acquittal of the charge of receiving stolen property because the record contains sufficient evidence from which a reasonable juror could find that Appellant knew or believed that the Smith & Wesson 9 mm was stolen in that the record showed that the gun was concealed under some men's clothes in Appellant's dresser drawer, while other handguns were stored in a container in the closet; Appellant's stepson stole the gun; one of the victim's other stolen guns was found in Appellant's garage; and Appellant had never applied for a permit to own or acquire the stolen gun.

Appellant claims that there was insufficient evidence to convict him of receiving stolen property (the Smith & Wesson 9 mm handgun) because the State did not prove that he had knowledge, or reason to believe, that the gun was stolen. The trial court, however, properly overruled Appellant's motion for a judgment of acquittal because the record contains sufficient evidence from which a reasonable juror could find that Appellant had knowledge, or reason to believe, that the gun was stolen.

A. Standard of Review

In reviewing sufficiency of evidence claims, this Court's review is limited to determining whether the evidence is sufficient for a reasonable juror to find each element

of the crime beyond a reasonable doubt. State v. O'Brien, 857 S.W.2d 212, 215-16 (Mo. banc 1993). Appellate courts do not review the evidence de novo, rather they consider the record in the light most favorable to the verdict:

> To ensure that the reviewing court does not engage in futile attempts to weigh the evidence or judge the witnesses' credibility, courts employ "a legal conclusion that upon judicial review all of the evidence is to be considered in the light most favorable to the prosecution." Thus, evidence that supports a finding of guilt is taken as true and all logical inferences that support a finding of guilt and that may reasonably be drawn from the evidence are indulged. Conversely, the evidence and any inferences to be drawn therefrom that do not support a finding of guilt are ignored.

State v. Grim, 854 S.W.2d 403 (Mo. banc 1993),

cert. denied, 510 U.S. 997 (1993)*State v. Chaney*, 967 S.W.2d 47 (Mo. banc 1998),

cert. denied, 525 U.S. 1021 (1998)*State v. Villa-Perez*, 835 S.W.2d 897 (Mo. banc 1992)*State v. Dulany*, 781 S.W.2d 52 (Mo. banc 1989)

The basis for Appellant's felony charge of receiving stolen property was that he retained the Smith & Wesson 9 mm handgun with the knowledge or belief that it had been stolen (L.F. 60-61). This charge was submitted to the jury under the following verdict director:

If you find and believe from the evidence beyond a reasonable doubt:

First, that on or about March 31, 2000, in the County of St. Charles, State of Missouri, the defendant retained a Smith & Wesson Model 915 9mm Semi-Automatic pistol, serial # VCH1210, and

Second, that the Smith & Wesson Model 915 9mm Semi-Automatic pistol, serial # VCH1210 was the property of another, and

Third, that at the time defendant retained this property, he knew or believed it had been stolen, and

Fourth, that defendant retained the property for the purpose of withholding it from the owner permanently, and

Fifth, that the property had a value of at least one hundred fifty dollars,

then you will find the defendant guilty of receiving stolen property.

(L.F. 43). Appellant contests the sufficiency of the evidence with respect to only the third element. His Point Relied On claims only "that the State presented absolutely no evidence that [Appellant] had knowledge or reason to believe that the weapon was stolen" (Appellant's Brief, p 9).

When a defendant challenges the sufficiency of evidence to prove that he either knew or believed that the property in question was stolen, the jury may infer this "guilty knowledge" from all the facts and circumstances in evidence. State v. Lindsey, 868 S.W.2d 114, 117 (Mo. App. W.D. 1993). "Because direct proof of the knowledge or

belief of the stolen character of goods is seldom available, it may be proven by inferences from circumstantial evidence." State v. Winder, 50 S.W.3d 395, 403 (Mo. App. S.D. 2001); *see also* State v. Hubbard, 759 S.W.2d 387, 389 (Mo. App. S.D. 1988) ("Knowledge or belief may be inferred from facts and circumstances"). "The State is not required to produce direct evidence that the defendant knew the items in question were stolen." *State v. Tomlin*, 830 S.W.2d 31, 33 (Mo. App. W.D. 1992); *see also* State v. Rogers, 660 S.W.2d 230, 232 (Mo. App. E.D. 1983).

Unexplained possession of recently stolen property is a circumstance which the jury may consider along with other facts and circumstances in determining whether a defendant knew or believed the property was stolen. *State v. Hubbard*, 759 S.W.2d at 389; State v. Morgan, 861 S.W.2d 221, 222 (Mo. App. E.D. 1993). "Further, suspicious conduct, deceptive behavior, and other facts and circumstances can be considered in determining whether it would be reasonable for a jury to find that Defendant knew or had reason to believe the property was stolen." *Brizendine v. Conrad*, 71 S.W.3d 587 (Mo. banc 2002)*State v. Morgan* and State v. Applewhite, 682 S.W.2d 185 (Mo. App. S.D. 1984), for the proposition that mere unexplained possession does not give rise to a reasonable inference that the defendant is guilty of receiving stolen property (Appellant's Brief, p. 13). The *Applewhite* opinion, however, does not refer to this proposition. Although the *Morgan* opinion states this proposition, Appellant neglects to mention that the *Morgan* court held that possession of recently stolen property may be considered

along with the other facts and circumstances of the case in determining Appellant's guilt. *State v. Gardner*, 741 S.W.2d 1 (Mo. banc 1987)*State v. Sours*, 633 S.W.2d 255 (Mo. App. S.D. 1982)*State v. Bird*, 1 S.W.3d 62 (Mo. App. E.D. 1999)*Id.* at 63. The rifle, however, was not found in the defendant's possession, but in the possession of a third party. *Id.* at 64. Here, on the other hand, not only did Appellant have current possession of the stolen gun, but there was evidence from which the jury could infer that Appellant knew or believed that the gun was stolen.

C. Appellant's Failure To Register The Stolen Gun Was Properly Considered

Appellant ignores the evidence in the record supporting the jury's finding that he knew or believed that the gun was stolen, and focuses his entire argument on evidence the State presented that Appellant failed to obtain a permit to acquire the stolen gun.

During trial, the supervisor of handgun permits for the St. Charles County Sheriff testified that any person wanting to acquire a handgun must first obtain a permit from the sheriff before acquiring the gun (Tr. 120-22). Indeed, § 571.080.1(1), RSMo 2000, makes it unlawful for anyone to receive a "concealable" firearm unless that person first obtains a valid permit authorizing its acquisition. These permits are issued by the sheriff in the county where the applicant resides. Section 571.090.1, RSMo 2000. The State's witness testified that Appellant did not own a registered gun in St. Charles County and that he had never applied for a permit to acquire one (Tr. 126, 132-33).

Certainly, the fact that a defendant violated the law and failed to obtain a permit to

acquire a stolen handgun is something that the jury may consider in determining whether the defendant knew or believed the gun was stolen. *Compare State v. Tomlin*, 830 S.W.2d at 33 (the fact that the defendant did not receive the title or a bill of sale when he purchased a car is a circumstance the jury may consider in determining whether the defendant knew or believed the car was stolen). Contrary to Appellant's argument, whether this fact alone is sufficient to prove that a defendant knew or believed a handgun was stolen is not an issue before this Court. In this case, the jury could consider the fact that Appellant failed to obtain a permit to acquire the gun along with the other facts and circumstances described above in concluding that Appellant knew or believed that the gun was stolen.

Appellant complains that the victim had failed to acquire a permit for all the handguns that he owned, yet he was not charged with receiving stolen property. Although there are many obvious shortcomings with this argument, the simple fact is that none of the victim's unregistered handguns were, in fact, shown to be stolen. On the other hand, Appellant never contested the fact that the gun which he failed to register was stolen.

Appellant also complains that this evidence did not tend to prove that he was aware that the handgun was stolen because he had not obtained a permit to acquire the other handguns the police found in his house. But the record does not show when, where, or how Appellant acquired these other handguns. The record does show, however, that

the victim's handgun was stolen in late December 1999, that the police found it in Appellant's dresser drawer in March 2000, and that Appellant never filed for a permit to acquire the gun. Appellant obviously acquired the stolen gun sometime during the three-month period after it was stolen and before it was found by the police, yet he failed to seek a permit to acquire the gun as required by law. The jury was permitted to consider this fact, along with the other facts and circumstances contained in the record, in determining whether Appellant knew or believed that the gun was stolen.

The trial court did not err in overruling Appellant's motion for judgment of acquittal. The record contained sufficient evidence from which a reasonable juror could conclude that Appellant knew or believed that the gun he concealed in his dresser was stolen.

II.

The trial court did not plainly err in overruling Appellant's motion to strike the entire venire panel because nothing in the record supports Appellant's claim that any member, much less the entire panel, was biased in that the record shows only that several members of the panel agreed with the unremarkable proposition advanced by Appellant's attorney during voir dire that if the law requires a gun to be registered then a person's failure to do so is a violation of the law.

Appellant claims the trial court erred in refusing to sustain his motion to strike the entire venire panel on the ground that it was biased based on their belief that "failure to register a handgun" was a violation of the law. Appellant's claim that his voir dire questioning revealed that the entire panel was "biased" is completely refuted by the record.

A. Standard of Review

Although Appellant filed a motion for new trial, it was apparently filed out of time. The jury returned its verdict on July 25, 2001, and nothing in the record shows that Appellant was granted any additional time in which to file his motion for new trial (L.F. 5). Appellant's motion was, therefore, due to be filed on August 9, 2001. Rule 29.11(b). Appellant's motion, however, was not filed until August 16, 2001 (L.F. 5). Therefore, this Court's review, if any, is for plain error. Rule 29.1230.20.

Plain errors may be considered in the discretion of the court when the court finds that manifest injustice or a miscarriage of justice has resulted therefrom. Rule 30.20. The plain error rule should be used sparingly and does not justify a review of every alleged trial error that has not been properly preserved for appellate review. State v. Hibler, 21 S.W.3d 87, 96 (Mo. App. W.D. 2000).

Plain error review is essentially a two-step process. First, the court must determine whether the claim for review "facially establishes substantial grounds for believing that manifest injustice or miscarriage of justice has resulted." *Id.* But not all prejudicial or reversible error is plain error. Plain errors are those which are "evident, obvious and clear. *Id.* A plain error is one that "must impact so substantially upon the rights of the defendant that manifest injustice or a miscarriage of justice will result if uncorrected." State v. Driscoll, 711 S.W.2d 512, 515 (Mo. banc 1986).

B. Appellant's Voir Dire Questioning Concerning Gun Registration

Appellant's complaint concerns a line of questioning he pursued with the venire regarding whether the venire members believed that the failure to register a handgun was a violation of law. Appellant's counsel first asked whether "anyone believe[d] that if you own a handgun or weapon and don't register it, that you are guilty of a crime?" (Tr. 44). Only one venire member responded and stated that he did not think it was necessary to register an antique or collectable gun, or one that was used for sport (Tr. 44-45).

Immediately following that response, another venire member asked whether the

question presumed that the law requires registration. Appellant's counsel said it did not, but then amended his question to include this statement:

> Venireman Queensen: Did you say that the law requires registration of a handgun?
>
> [Appellant's Counsel]: Did not say that.
>
> Venireman Queensen: Oh.
>
> [Appellant's Counsel]: [The Prosecutor] had indicated that in his questioning, my question would be the opposite of that. If the law did require registration or getting some sort of a document to get guns, and you didn't do that, do you believe that that person should be guilty of a crime or is guilty because they fail to do that.
>
> Venireman Orf: If the law requires.
>
> [Appellant's Counsel]: Can I have a showing of those hands? Please bear with me just a minute, okay.
>
> [Appellant's Counsel]: Ms. Stroud.
>
> Venireman Stroud: Yes, if the law states you have to register a gun and you don't, then you could be guilty of breaking the law.
>
> [Appellant's Counsel]: Is that pretty well the general position of those with their hands up, if the law states you must register and you don't, you are guilty of a violation of the law? Can I have a showing of all those? I am going to

[sic] down the line one by one, if you don't mind. Ms. Stroud, your badge number?

(Tr. 45-46). As Appellant's counsel was writing down badge numbers, he asked one venire member to explain his response:

[Appellant's Counsel]: Number six. Mr. Corry, I have a question about your statement. You first said it's a crime not to register the gun, then you said breaking the law by not registering the gun. I guess the question is, what are you referring to as a crime by not?

Venireman Corry: I don't think not registering a gun would be a crime like stealing something or shooting somebody as a crime, but I think you are breaking the rule of owning a gun you should have it registered. I don't know where that lies on your statement.

[Appellant's Counsel]: Let me try to clarify it the best I can without getting into the facts of this case. If in fact the law does not require the registration of a gun, do you believe not registering it would render you not only guilty of not registration, but any other violations of law if you are accused of wrongdoing?

Venireman Corry: Well, that kind of depends what you are accused of. I just–I am trying to fit not registering a gun to what it's really classified as not registering a gun, not depending what the crime is you are talking about,

it's kind of hazy for me right there. What you are saying is putting a criminal charge on not registering a gun I don't believe in, but you do have a responsibility of registering a gun. I am still confused where that lies. You are saying it's a crime not to register the gun, I am not sure if I agree with that.

[Appellant's Counsel]: Well, I am not saying that it is a crime not to register a gun.

Venireman Corry: I am saying it's not either.

[Appellant's Counsel]: I am saying if the law does require it, okay, I am not saying it does or it doesn't. I am saying if the law requires that, and you haven't registered the gun, are you guilty of wrongdoing, and I think the general understanding was yes.

(Tr. 46-48). Another venire member then asked a question clarifying that the question was not whether the venire believed in registration, but whether it is wrong not to register if the law required it (Tr. 49-50). This led to a question by another venire member asking for further clarification:

Venireman Mullen: My point simply is this, your question was if there is a law or ordinance requiring you to register the gun, regardless what you believe about it, you can believe you can spit on the sidewalk and get away it or if there is a law ordinance against it, if you have done it, then you are

breaking the law, whether or not you agree with it.

[Appellant's Counsel]: Are you guilty of a crime if you don't?

Venireman Mullen: You are guilty of breaking the law.

[Appellant's Counsel]: Breaking only the registration law.

Venireman Mullen: Correct.

[Appellant's Counsel]: Is that what you all would refer to, violation of the registration law? Okay. Yes, ma'am.

(Tr. 51).

C. The Entire Venire Panel Was Not Biased.

"Because the trial court is in the best position to evaluate the veniremember's commitment to follow the law, it has broad discretion in determining qualifications of a prospective juror." State v. Rousan, 961 S.W.2d 831, 839 (Mo. banc 1997), *cert. denied*, 118 S.Ct. 2387 (1998); *see also* State v. Kreutzer, 928 S.W.2d 854, 866 (Mo. banc 1996), *cert. denied*, 117 S.Ct. 752 (1997). Control of voir dire is within the sound discretion of the trial court, and an appellate court will interfere with this discretion only when the record shows a clear abuse of discretion. *Kreutzer*, 928 S.W.2d at 866; State v. Roe, 845 S.W.2d 601, 605 (Mo. App. E.D. 1992). The party asserting such an abuse of discretion has the burden of demonstrating a real probability that he was thereby prejudiced. State v. Stewart, 859 S.W.2d 913, 917 (Mo. App. E.D. 1993). "The qualifications of a prospective juror are not determined conclusively by a single response, but are

determined on the basis of the voir dire as a whole." *d*.

Appellant contends that his voir dire questioning revealed that the entire venire was biased and that the trial court erred in not sustaining his motion to strike the panel. Nothing in the record even remotely supports Appellant's claim. At best, Appellant's voir dire revealed that the venire members agreed with the rather unremarkable proposition that if the law requires a gun to be registered and a person fails to do so, then that person is in violation of the law. Appellant does not explain how this shows that the entire panel was biased.

Although Appellant's questions may, at first, have been confusing, the record shows that the venire members sought clarification and ultimately understood what was being asked. In any event, an entire venire panel cannot be struck when it is the defendant's questioning that leads to the confusion. *See State v. Cammack*, 813 S.W.2d 105, 107 (Mo. App. E.D. 1991). As the excerpts above demonstrate, if there was any confusion by the venire members, it directly resulted from Appellant's questioning.

Although it is unclear, Appellant's primary complaint appears to be that his questioning revealed that the venire members had "preconceived notions that a person who did not register or acquire a permit to obtain a handgun is in violation of the law" (Appellant's Brief, p. 26). But the record shows that the venire members had no such preconceived notions. The members who were questioned simply agreed with the proposition that if the law requires a gun to be registered, then a person who fails to

register it is in violation of the law. This response revealed no bias, except maybe for the venire members' inclination to use their common sense.

Finally, the cases relied on by Appellant have no relevance whatsoever to this issue and Respondent will not waste this Court's time in analyzing them. But one allegation Appellant makes does require a response.

Appellant asserts that the trial court "interrupted" his counsel's voir dire and asked a question of its own (Appellant's Brief, p. 24). Appellant even quotes this question, but fails to cite this Court to the transcript page where it was asked. Appellant even alleges that three venire members, in response to this question, responded "that they did not believe a failure to register or acquire a permit was a violation of law (Appellant's Brief, p. 24).

Respondent's counsel has thoroughly reviewed the transcript and can find nothing showing that the trial court interrupted Appellant's voir dire, that the trial court asked this question, or that three venire members responded in the manner alleged by Appellant. The trial court made only two statements during Appellant's voir dire, and neither time did the trial court ask any question even remotely similar to the one Appellant quotes in his brief (Tr. 49, 52). In short, Appellant's claim that the trial court interrupted his voir dire, that it asked the question quoted in his brief, and that it received a response from three venire members is simply untrue.

The trial court committed no error, plain or otherwise, in overruling Appellant's

motion to strike the entire venire panel. The panel's response to Appellant's question revealed no bias whatsoever, much less any bias that would render the entire venire incapable from serving as fair and impartial jurors in this case.

CONCLUSION

The trial court did not commit reversible error in this case. Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned assistant attorney general hereby certifies that:

(1) That the attached brief includes the information required under Rule 55.03 and complies with the limitations contained in Rule 84.06(b) in that it contains 6019 words, excluding the cover, the signature block, this certification, and any appendix, as determined by WordPerfect 9 software; and

(2) That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and

(3) That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed on April 29, 2003, to:

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